IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

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J U D G M E N T

Om Prakash Vs. Ram Swaroop & anr.

S.B.CIVIL FIRST APPEAL NO. NO.202/1990 AGAINST THE JUDGMENT AN DECREE DATED 23.8.90 PASSED BY LEARNED ADDL. DISTRICT JUDGE NO.2, AJMER IN CIVIL SUIT NO.132/85.

Date of Order : December 07, 2006.

P R E S E N T

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr.Arjun Karnani, for the appellant/defendant.
Mr.R.D.Tripathi, for the the respondents/plaintiffs.

BY THE COURT:

1. This appeal is directed against the Judgment and decree dated 23.8.1990 of learned Addl. District Judge No.2, Ajmer decreeing the suit No.132/85.

2. The suit for specific performance was filed on the basis that the defendant had agreed to sell the suit property i.e. a residential house situated at Christian Ganj, Ajmer on 14.9.1974 for a consideration of Rs.35,000/- to the plaintiff and under such agreement, a sum of Rs.20,000/- was paid as an advance and the balance

sum was to be paid upon execution of sale-deed in favour of the plaintiffs. Ex.-1, Agreement was executed by the defendant Om Prakash in favour of the plaintiffs. The defendants refused to execute the sale-deed in favour of the plaintiffs. The present suit was therefor filed claiming the specific performance of Agreement to sell and in default thereof, the plaintiffs claimed damages to the extent of Rs.30,000/-.

3. The defendants contested the suit and submitted in the written statement that no such agreement was executed and even if some agreement is held to be executed, same was done under coercion and was, therefore, not with the free consent of defendant. It was further submitted that defendant was engaged in the business of sale and purchase of gold and silver ornaments and had such business transaction with the plaintiffs, and on account of dispute in such transaction, the plaintiffs got executed the sale agreement Ex.1 under undue influence and coercion and, therefore, sale was not required to be performed by the defendants.

4. The learned trial court on th basis of material available on record, framed following six issues:-

(i)Whether as per para no.9 of the written statement, plaintiff got executed the agreement without making payment of Rs.20,000/- and the said agreement is without any consideration?

(ii)Whether the plaintiff got executed the agreement from the defendant after threat & undue pressure and what is its effect on the suit?

(iii)**Whether as per contents of written statement, defendant has agreed to sell 1/3rd part of the property in consideration of Rs.30,000/- and for this reason, plaintiff is not entitled to get any relief as per agreement dated 14.9.74?**

(iv)Whether defendant is not the sole owner of the disputed property and in pursuance of agreement dated 14.9.74 he is not entitled to transfer the property in question and whether this fact was known to the plaintiff at the time of execution of agreement and what is its effect on the suit?

(v)Whether the plaintiff is ready and wiling to perform his part as per agreement dated 14.9.74?

(vi)Relief?

5. In the form of evidence, plaintiffs produced PW-1 Ganga Sahai, and documentary evidence in the form of Ex.1 and others whereas defendants produced himself as DW-1 Om

Prakash, DW-2 Ram Charan and DW-3 Birdi Singh. The trial court after consideration of the evidence on record, decreed the suit and granted relief in the form of payment of Rs.30,000/- by the defendants to the plaintiffs. However the trial court refused to direct the defendant to execute the sale-deed of the suit property in question in favour of the plaintiffs. The trial court however directed payment of interest @12% per annum.

6. Being aggrieved by the said decree, the defendant has come up to this court in appeal.

7. Mr.Karnani, learned counsel appearing for the appellant-defendant urged before the court that since the attesting witnesses of agreement Ex.1 i.e. Ladu Ram and Murarilal Sharma have not been produced before the trial court by the plaintiffs and even defendants' application to get them produced was rejected by the trial court, adverse inference should be drawn against the plaintiffs and, therefore, the said document Ex.1 cannot be held proved though he admitted that defendant Omprakash admitted his signatures on the said agreement dated 14.9.74. Learned counsel for the appellants, therefore, contended that such agreement was without consideration as no cash was paid by the plaintiffs in the form of

Rs.20,000/- and the said agreement being void cannot be enforced.

8. As against this, Mr.Tripathi learned counsel appearing for the respondents/plaintiffs contended that the learned trial court has rightly decreed the suit and in fact the specific performance in the form of sale-deed of the suit property ought to have been granted but since there is no cross appeal or cross-objection by the plaintiffs against the impugned judgment of learned trial Court, he would not press for such a relief here but he submitted that relief granted in the form of refund of money of Rs.20,000/- & Rs.10,000/- as damages on account of failure to execute the sale-deed treating the agreement to sale Ex.1 as a proved document is absolutely justified and, therefore, the present appeal deserves to be dismissed.

9. Having considered the rival submissions and upon perusal of the pleadings and evidence available on record, this court is of the opinion that there is no force in this appeal and same deserves to be dismissed.

10. The document Ex.1 Agreement to sell has been executed in the own hand writing of defendant Om Prakash

who admits his signatures on the said agreement, therefore, the contention that such agreement was without consideration as no cash was paid by the plaintiffs in the form of Rs.20,000/- cannot be believed nor it can be believed that it was executed under coercion or undue influence. Mere non-production of attesting witnesses cannot be held to be sufficient to treat the said agreement as not proved or unworthy of reliance. Moreover the grant of relief in the form of specific performance is a discretionary relief and since the trial court has exercised such discretion fairly directing only for refund of advance of Rs.20,000/- with interest and Rs.10,000/- as damages, this court finds no error in the said use of discretion by the trial court and nothing substantial has been pointed out by the learned counsel appearing for the appellant-defendant which could persuade this court to reverse the said findings of the trial court.

11. Accordingly, this appeal is dismissed with no order as to costs. However, the rate of interest of 12% awarded by the learned trial court is reduced to 9% simple interest per annum. Decree be made accordingly.

(Dr.VINEET KOTHARI)J.

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